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10/031,668	01/18/2002	Stefan Lundgren	230.014	6841

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EXAMINER

SKAARUP, JASON M

ART UNIT	PAPER NUMBER
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3714

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Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	Application No. 10/031,668	Applicant(s) LUNDGREN ET AL.	
	Examiner Jason Skaarup	Art Unit 3714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 01 August 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5,7-16,21-26,28-42 and 44-60 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5,7-16,21-26,28-42 and 44-60 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on August 1, 2005 has been entered and the Examiner's response to Applicant's arguments is detailed after the rejections presented herein.

### ***Claim Objections***

2. Claims 21 and 56 are objected to because of the following informalities:

Claim 21 recites the limitation "the input device" in line 7 thereof. There is insufficient antecedent basis for this limitation in claim 21. Appropriate correction is required.

Claim 56 recites the limitation "and wherein at least one of said links comprises a non-wireless electrically digital data signal conducting connection. selection of said action program is automatic." Each claim begins with a capital letter and ends with a period. Periods may not be used elsewhere in the claims except for abbreviations. See MPEP 608.01(m). Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 10, 31 and 48 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claims 10, 31 and 48, the phrase "for example" renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

***Claim Rejections - 35 USC § 102***

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1-5, 11, 15, 16, 21-26, 32, 36-42, 44, 49, 53, 54, 56 and 59-60 are rejected under 35 U.S.C. 102(e) as being anticipated by Shea (U.S. Patent No. 6,050,924).

Shea discloses a system for registering and analyzing data from a practiced stage, and for generating action programs in dependence of the performed analysis as recited in claims 1, 21, 22 and 38. The disclosed system comprises:

means for registering a result data for one or more predetermined parameters from one or several performed stages (keypad 207, pulse monitor 210 of Figure 2 along with the related description thereof, wherein result data for a predetermined parameter, e.g., practitioner pulse rate or exercise level, are registered for performed stages or exercises);

means for calculating, for each of the parameters, a characteristics measurement value for a predetermined characteristics measurement (Figure 11A along with the related description thereof, wherein a characteristics measurement value, e.g., pulse rate, is calculated as a current exercise or fitness level);

means for generating a characteristics profile by compiling the calculated characteristics measurement values (Figure 11A along with the related description thereof, wherein a characteristics profile is generated by compiling the calculated characteristics, e.g., pulse rate and wherein the characteristics profile includes profile data regarding the practitioner, e.g., current exercise or fitness level, and used in the selection of an exercise program as described in col. 12, lines 31-45);

means for generating a comparison profile by comparing the characteristics profile with a pre-stored normal profile (col. 12, line 65 to col. 13, line 9, wherein the practitioner's current exercise or fitness level and heart rate are compared to a pre-stored normal profile or recommended exercise or fitness level); and

means for selecting, from a plurality of pre-stored action programs, based on the characteristics profile or comparison profile, a pre-stored action program adapted for overcoming shortcomings representative of the comparison profile or the characteristics profile (col. 6, lines 45-52 and lines 61-66 and col. 24, lines 27-54, wherein a pre-stored action program or exercise program is automatically selected from a plurality of such programs based on one of the characteristics profile, or current exercise or fitness level of the practitioner, and the comparison profile, or recommended exercise or fitness level).

Regarding claim 38, Shea disclose means for selecting, using at least one of the characteristics profile and the comparison profile, a pre-stored action program, wherein the pre-stored action program is configured to convey a practitioner a plurality of steps or instructions directed toward converging (a) a subsequent characteristics profile, generated from characteristics measurement values calculated using data from at least one future practiced stage, toward (b) the pre-stored normal profile (col. 6, lines 45-52 and lines 61-66, wherein a pre-stored action program or exercise program is automatically selected from a plurality of such programs based on one of the characteristics profile, or current exercise or fitness level of the practitioner, and the comparison profile, or recommended exercise or fitness level and wherein the exercise program conveys a plurality of steps or instructions to the practitioner as described in col. 10, lines 27-58 and col. 11, lines 44-48 to obtain the recommended exercise or fitness level).

Regarding claims 2, 23 and 39, Shea discloses presentation means for graphically presenting the comparison profile on a presentation unit (displays 266 and 280 of Figure 8A along with the related description thereof, wherein the display 266 displays a monitored pulse rate and display 280 displays instructions or feedback to a practitioner to obtain a recommended exercise or fitness level and Figure 6 along with the related description thereof, wherein instructions or feedback are presented to the practitioner).

Regarding claims 3, 24 and 40, Shea discloses comparison means for generating a comparison profile by applying a predetermined mathematical operation to the characteristics profile and the normal profile (col. 12, line 65 to col. 13, line 9, wherein the practitioner's current exercise or fitness level and heart rate are compared to a pre-stored normal profile or recommended exercise or fitness level by applying a predetermined mathematical operation, e.g., subtracting the practitioner's age from 220 to obtain a maximum pulse rate).

Regarding claims 4, 25 and 41, Shea discloses comparison means for generating a comparison profile, in the form of a difference profile, by calculating the difference between characteristics measurement values for each parameter of the characteristics profile and the normal profile, respectively (col. 12, line 65 to col. 13, line 9, wherein the practitioner's current exercise or fitness level and heart rate are compared to a pre-stored normal profile or recommended exercise or fitness level).

Regarding claims 5, 26 and 42, Shea discloses presentation means for presenting the comparison profile so that a current characteristics measurement value

and a normal characteristics measurement value can be visualized in the same diagram (displays 304 and 305 of Figure 7 along with the related description thereof, wherein display 305 presents a current characteristics measurement value, e.g., current exercise or fitness level, and display 304 presents a normal characteristics value, e.g., recommended exercise or fitness level, on the same display). Also see col. 22, lines 48-62.

Regarding claims 11, 32 and 49, Shea discloses presentation means for presenting the comparison profile on the presentation unit in the form of a bar diagram having one bar for each game parameter, where bar height corresponds to the characteristics measurement value (Figure 6 along with the related description thereof, wherein each bar of Figure 6 represents an exercise or fitness level and wherein bar height corresponds to exercise or fitness level difficulty). Also see col. 22, lines 48-62.

Regarding claims 15 and 36, Shea discloses means for storing characteristics measurement values in a memory (memory 203, 205 and 212 of Figure 5 along with the related description thereof and col. 6, line 61 to col. 7, line 5).

Regarding claims 16 and 37, Shea discloses means for storing characteristics profiles in a memory (memory 203, 205 and 212 of Figure 5 along with the related description thereof, col. 6, line 61 to col. 7, line 5 and Figure 11A along with the related description thereof).

Regarding claim 44, Shea discloses means for visually presenting instructions and figures associated with the current action program (displays 304 and 305 of Figure 7 along with the related description thereof, wherein display 305 presents a current



characteristics measurement value, e.g., current exercise or fitness level, and display 304 presents a normal characteristics value, e.g., recommended exercise or fitness level, on the same display). See also Figures 6 and 8A along with the related description thereof.

Regarding claim 54, Shea discloses that the action program comprises a training model having one or more pre-stored instructions to perform at least one exercise to overcome at least one of the shortcomings (col. 7, line 51 to 64 and col. 24, line 55 to col. 25, line 31, wherein the exercise program selected includes a training model having one or more pre-stored instructions to perform at least one exercise to overcome at least one of the shortcomings, e.g., for the practitioner to select workouts or exercises suited for tennis or golf).

Regarding claim 56, Shea discloses a keyboard (508) for data entry, a processor (501) for performing the calculating, profiling, comparing and selecting of the above-described profiles and action program(s), and a database (507) for storing the reference profiles or recommended exercise or fitness levels in Figure 10 along with the related description thereof. As described in col. 6, lines 45-52 and lines 61-66 and col. 24, lines 27-54, Shea discloses that processor 501 automatically selects a pre-stored action program or exercise program from a plurality of such programs stored in database 507 based on one of the characteristics profile, or current exercise or fitness level of the practitioner, and the comparison profile, or recommended exercise or fitness level.

Regarding claims 53, 59 and 60, Shea discloses that the selection of the action program is automatic (col. 6, lines 45-52 and lines 61-66 and col. 24, lines 27-54,

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wherein a pre-stored action program or exercise program is automatically selected from a plurality of such programs based on one of the characteristics profile, or current exercise or fitness level of the practitioner, and the comparison profile, or recommended exercise or fitness level).

### ***Claim Rejections - 35 USC § 103***

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 7-10, 12, 28-31, 33, 45-48 and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shea in view of Gatts (U.S. Patent No. 3,675,640).

Shea teach the system of independent claims 1, 21, 22 and 38 as detailed above. Specifically, Shea teach a system wherein a pre-stored action program or exercise program is automatically selected from a plurality of such programs based on one of the characteristics profile, or current exercise or fitness level of the practitioner, and the comparison profile, or recommended exercise or fitness level (col. 6, lines 45-52 and lines 61-66 and col. 24, lines 27-54). However, Shea does not explicitly teach deriving the normal characteristics profile, or recommended exercise or fitness level including pulse rate, from an average practitioner within a group of practitioners with common properties as recited in claims 7, 8, 28, 29, 45 and 46. In a related exercise program system, Gatts teaches comparing an exerciser's current fitness or health level

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against a pre-established norm for a person of that type (col. 3, lines 3-6) to develop an optimized exercise program for the exerciser. Further, Gatts teaches that the pre-established norm for a person is based on normal population coefficients (col. 3, lines 49-50) that have been derived from past research test data (col. 3, line 72 to col. 4, line 21). The "pre-established norm for a person of that type" as taught by Gatts is based on an average person within a group of people having common properties, such as age or health status (col. 3, lines 8-11). Gatts teaches that comparing the exerciser's current fitness or health level against a pre-established norm for a person of that type (col. 3, lines 3-6) helps to determine the most appropriate exercising device or program (col. 6, lines 63-64). It would have been obvious for one skilled in the art at the time of the invention to incorporate the pre-established norm for a person of that type selected from a group of people with common properties as taught by Gatts into the exercise system of Shea in order to select the most appropriate exercising device or program as taught by Gatts at col. 6, lines 63-64.

Regarding claims 9, 30 and 47, the combination of Shea and Gatts teaches that the practitioner is a sports practitioner wherein the stage is a game round of the sport (col. 24, lines 55-59 of Shea), the parameter is a game parameter (col. 25, lines 13-15 of Shea, wherein the game parameter for a runner is time running a race or marathon) and the action program is a training model for improvement of the practitioner's player properties within the sport (col. 24, line 55 to col. 25, line 31 of Shea).

Regarding claims 10, 31 and 48, the combination of Shea and Gatts teaches means for entering player data for the sports practitioner, wherein the normal profile is based on corresponding player data, e.g., age (col. 3, lines 3-11 of Gatts).

Regarding claims 12, 33 and 50, the combination of Shea and Gatts teaches presentation means for presenting the comparison profile on the presentation unit in the form of a curve chart (col. 3, lines 3-20 of Gatts, wherein the exerciser's current fitness or health level is compared in curve chart format against a pre-established norm for a person of that type so that the exerciser can be presented with the comparison.

### ***Allowable Subject Matter***

9. Claims 13, 14, 34, 35, 51, 52 would be allowable if rewritten to include all of the limitations of the base claim and any intervening claims.

Claims 57 and 58 would be allowable if rewritten to include all of the limitations of the base claim and any intervening claims, provided that intervening claim 56 is amended to overcome the objection thereof set forth in this Office action.

### ***Response to Arguments***

10. Applicant's arguments with respect to claims 1-5, 7-16, 21-26, 28-42 and 44-52 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***


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11. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure and is listed on the attached Notice of References Cited (PTO-892).

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Jason Skaarup whose telephone number is 571-272-4455. The Examiner can normally be reached on Monday-Thursday (10:00-8:00).

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Primary, Jessica Harrison can be reached at 571-272-4449. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
CHANDA L. HARRIS  
PRIMARY EXAMINER